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In the Matter of:

IB Docket No. 96-111
CC Docket No. 93-23
RM-7931
File No. ISP-92-007

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I. The Commission Should Go Further Than Merely Eliminating the “ECO-Sat” Test for WTO Member Countries

As in its earlier comments, AirTouch supports the Commission’s efforts to open domestic market entry to foreign carriers. That process will, in turn, encourage other nations to open their markets to U.S.-licensed providers. On this basis, AirTouch supports the Commission’s proposal to establish a presumption that no “ECO-Sat” or “effective competitive opportunities” analysis is required in evaluating entry by satellite providers licensed by WTO members. WTO Satellite Notice, para. 2.

However, the FCC proposes to retain the “ECO-Sat” competitive analysis for satellites licensed by non-WTO members, and also proposes that all applications be examined to see whether they meet various “public interest” criteria, e.g., the significance of the proposed entry to the promotion of competition in the U.S. and the global satellite market; issues of national security, law enforcement, foreign policy and trade policy. WTO Satellite Notice, para. 6. AirTouch encourages the Commission to continue its emphasis on free trade principles and to proceed cautiously before restricting or conditioning entry by foreign carriers, mindful of the reciprocal effects of limiting entry by non-U.S.-licensed satellite carriers on both U.S. providers and consumers of telecommunications services.

Adoption of additional and unnecessary regulation could undermine confidence in the mutual trust between nations essential to mutual removal of barriers to market entry. Any public interest factors to be considered should be clearly explained so that foreign carriers will have sufficient notice as to the requirements of a particular application. Any such factor must also be within those factors permitted by our international agreements. The Commission’s proposals to eliminate the “ECO-Sat” test for WTO members are a step in the right direction, however, the

global nature of today's satellite marketplace requires that the Commission go further to ensure that U.S.-licensed satellite carriers can provide services abroad.⁴

II. The Commission Should Eliminate the “ECO-Sat” Test For All Mobile Satellite Service Providers And Address Any Competitive Concerns Through Its Existing Rules

As both the DISCO II Notice and the WTO Satellite Notice recognize, the “ECO-Sat” analysis of competition in a “home market” may not be applicable to all satellite services, particularly mobile satellite services, because there is no relevant “home market.” See, e.g., WTO Satellite Notice, para. 24; DISCO II Notice, paras. 44-47. Mobile satellite services use an inherently global system design, which permits worldwide service with only a relatively small incremental investment in gateway earth stations. The WTO Satellite Notice also observes that, with certain systems, landline facilities will be used instead of satellite links; in that case, there would be no U.S. earth station application or other vehicle to trigger an “ECO-Sat” analysis. WTO Satellite Notice, para. 5

As it did in the DISCO II Notice, the FCC proposes as one solution to analyze “effective competitive opportunities” in the MSS market by measuring whether some “critical mass” of markets served by a non-U.S. system are open to U.S. licensees before permitting a non-U.S. MSS system to provide service in the U.S. WTO Satellite Notice, para. 5. AirTouch opposes using this “critical mass” approach because it would punish those countries who were early in opening their markets, and because of the administrative burden in determining which set of markets is relevant and sufficient to warrant regulatory streamlining. This type of uncertainty is too great for a

⁴AirTouch notes, however, that a number of additional and complex issues are raised by market entry requests by treaty-based intergovernmental satellite organizations, their successors, and separated entities. These service providers may very well warrant different regulatory treatment than that applied to carriers not related to any such organization.

foreign MSS provider to be able to plan their business. As the Commission observed in the DISCO II Notice, such an approach “raises difficult questions about exactly which countries are relevant and how ‘critical mass’ can be defined to an acceptable level of regulatory certainty.” DISCO II Notice, para. 31.

AirTouch submits that answering these difficult questions is no longer necessary. The effect of the WTO agreement is that a sufficient “critical mass” of markets served by a non-U.S. system has likely been opened sufficiently to render application of a competitive analysis unnecessary. Sixty-nine WTO member countries made market access commitments under the Basic Telecom Agreement, concluded in February of this year.⁵ This certainly represents a sufficient “critical mass” to demonstrate that the time for the Commission to strictly control market entry by non-U.S. licensees has passed.

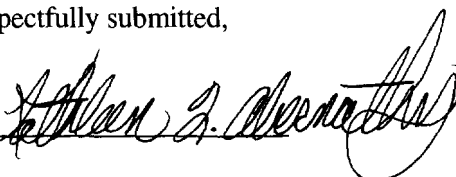
To the extent that a non-U.S. licensed MSS provider seeks to serve a non-WTO market as well as the U.S. market, competition concerns can be remedied, as the Commission observed, by applying its existing rules evenhandedly as between U.S. and non-U.S. satellite providers operating in the U.S. market. See WTO Satellite Notice, para. 27. Specifically, the Commission observes that competition concerns relating to non-WTO route markets can be remedied by prohibiting non-U.S. licensed satellites from entering into exclusionary arrangements with the country in which they wish to operate, a regulation which also applies to U.S. licensed systems.⁶ This form of “national treatment” of non-U.S.-licensed mobile satellite service providers is far more likely to promote open entry into foreign markets, yet also protects against anti-competitive arrangements.

⁵ WTO Satellite Notice, para. 10; see General Agreement on Trade in Services, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 1167 (1994), art. XVI.

CONCLUSION

AirTouch supports the Commission's proposal to eliminate the "ECO-Sat" test for non-U.S.-licensed satellite carriers from WTO member companies, but believes that step does not go far enough. Mobile satellite services are inherently global and are not susceptible to a "home market" or route-by-route analysis. AirTouch submits that the conclusion of the WTO agreement represents attainment of a sufficient "critical mass" of foreign markets which are opened to entry by U.S.-licensed satellite carriers to support elimination of U.S. market entry restrictions. Any anti-competitive acts can be addressed by applying the Commission's existing rules evenhandedly to all satellite carriers operating in the U.S. market.

Respectfully submitted,

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⁶WTO Satellite Notice, para. 27; see 47 C.F.R. § 25.143.